



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO
ATTENTION OF:

Office of the Chief
Regulatory Branch

**AGREEMENT FOR ESTABLISHMENT AND ADMINISTRATION OF
THE VENTURA RIVER WATERSHED IN-LIEU FEE MITIGATION PROGRAM**

Between
the U.S. Army Corps of Engineers
and
the Ojai Valley Land Conservancy

Background and Purpose

The U.S. Army Corps of Engineers (Corps), Los Angeles District and the Ojai Valley Land Conservancy (Conservancy) recognize the ecological importance of wetlands and waterways in a watershed. The Corps also recognizes the potential for direct, indirect and cumulative adverse impacts which may occur to these resources as a result of projects authorized by Corps permits. To comply with the Clean Water Act Section 404(b)(1) Guidelines the Corps often requires compensatory mitigation to offset adverse impacts to the aquatic environment. To facilitate such compensatory mitigation, the Corps and the Conservancy hereby propose to establish the Ventura River Watershed Habitat Restoration Fund In-lieu Fee Mitigation Program, hereinafter, the "In-lieu Fee Program." The purpose of the In-lieu Fee Program is to provide permit applicants with a voluntary, alternative compensatory mitigation option that will result in better designed and managed aquatic resource restoration projects. The In-lieu Fee Program is designed to facilitate a holistic approach to aquatic resource management in the Ventura River watershed, putting money where there is the greatest opportunity for long-term ecological benefit. This approach should compare favorably to the creation of small, isolated mitigation projects managed by developers, homeowners associations, or other permittee-designated managers, as typically approved under the traditional permitting approach. Permittees will be allowed to pay monies into the In-lieu Fee Program fund to satisfy Corps mitigation requirements only after avoidance and minimization of project-related impacts to wetlands have been accomplished to the maximum practicable extent, and after onsite mitigation opportunities have been evaluated and determined infeasible. The In-lieu Fee Program will generally be limited to mitigation for unavoidable, small or minor impacts to aquatic resources in the Ventura River watershed. Exceptions to allow mitigation for projects outside the Ventura River watershed or which have more than small impacts would be mutually agreed upon by the Conservancy and the Corps on a case by case basis.

The In-lieu Fee Program funds will be used to accomplish the following objectives:

Meet the national goal of no overall net loss (in terms of functions and values) of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's aquatic resource base;

Provide a compensatory mitigation alternative to Corps permit applicants, particularly in those instances where onsite mitigation is infeasible; and

Provide for more efficient use of Corps staff resources devoted to the review of mitigation plans and monitoring reports and to compliance inspections.

In-lieu Fee Program Establishment and Administration

The Conservancy and the Corps will administer the In-lieu Fee Program to accomplish the objectives identified above. The In-lieu Fee Program fund will receive monies from individuals or entities receiving Corps Section 404 permits and, when appropriate, to resolve Section 404 enforcement actions. Typically, the In-lieu Fee Program shall be limited to mitigation for impacts to aquatic resources of one (1) acre or less, and shall not be used to mitigate for impacts to unique aquatic resources such as vernal pools or tidal/estuarine wetlands. The Conservancy retains full authority to review projects on a case-by-case basis and approve or deny acceptance of mitigation monies into the In-lieu Fee Program fund.

The Conservancy will obtain qualified wetland and aquatic resource restoration expertise and use aggregated monies from the In-lieu Fee Program fund to implement selected aquatic resource restoration, enhancement or creation projects, hereinafter, "mitigation projects." The Conservancy shall obtain all federal, state and local permits required for implementation of the restoration projects carried out under the In-lieu Fee Program. The Corps retains full authority to approve or deny the expenditure of any Fund monies and to approve proposed project sites and mitigation plans. Written approval from the Corps will be required, on a project-by-project basis for the mitigation projects, prior to expenditure of In-Lieu Fee Program funds. The Corps shall determine the required mitigation acreage for the Corps-permitted projects, and the Conservancy shall determine the cost-per-acre for the required mitigation.

In-lieu Fee Program funds shall be used solely for activities directly related to aquatic habitat restoration, enhancement or creation, to include exclusively the following activities: land acquisition; purchase of easements; purchase of water rights; development of mitigation and monitoring plans; permit fees; implementation of mitigation and monitoring plans; administrative costs; and long-term management of mitigation parcels. Administrative costs shall be limited to a maximum of 13% of the mitigation fees accepted for any given project. Administrative costs include, but are not limited to, bookkeeping, mailing expenses, printing, office supplies, bank fees, training, travel, and staff time directly related to supporting these expenses and similar activities. Administrative costs do not include mitigation plan development, project monitoring, purchasing of property/easements/water rights, permit

fees, or long term management.

The Conservancy shall maintain accurate records for expenditure of In-Lieu Fee Program funds and documentation of restored areas, including the date restoration work began at each mitigation site, the total number of acres restored, and all annual monitoring reports. The Conservancy shall provide the Corps with an annual financial report containing a detailed account of how all monies from the In-lieu Fee Fund were expended during the preceding year. This report shall be submitted to the Corps by March 1st of each year.

The Conservancy shall prepare individual mitigation plans for each mitigation parcel. The mitigation plans shall be prepared by a qualified restoration ecologist with experience in Ventura County riparian/wetland ecosystems. The mitigation plans shall, at a minimum, include the following: Plant palette; planting specifications (densities, spacing, etc.); revegetation techniques; irrigation methodology; non-native plant management measures; annual and final performance criteria (to be used to evaluate success of the restoration efforts); contingency measures (to be implemented if performance criteria are not met); and, monitoring schedule for 5-year monitoring period.

The Conservancy shall be responsible for mitigation monitoring, and shall provide annual monitoring reports to the Corps for a minimum of five (5) years from the date of initiation of restoration work at each mitigation site. The monitoring reports shall be prepared by a qualified restoration ecologist with experience in Ventura County ecosystems. The annual monitoring reports shall, at a minimum, include the following information: documentation of relative success of restoration effort at meeting annual performance criteria, recommended contingency measures, photographs taken from designated photo stations.

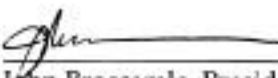
To ensure permanent protection of the mitigation sites, the Conservancy or a qualified organization designated by the Conservancy and approved by the Corps shall obtain in-perpetuity conservation easements or deed restrictions, and cause such conservation easement or deed restrictions to be recorded at the Ventura County Registry of Deeds. All mitigation projects shall be designed to be self-sustaining in the long term to the maximum extent feasible.

This agreement shall become effective on the date of signature by both parties. Either party to the agreement may terminate the agreement within 60 days of written notification to the other party. The Conservancy may discontinue receiving funds to conduct restoration activities upon written notification to the Corps. However, without written approval from the Corps, the Conservancy shall not be relieved of its obligations under this agreement to complete restoration and maintain mitigation sites at which restoration has been initiated or for which some funds have already been expended. If the Conservancy or Corps cancel the agreement, any unused In-lieu Fee Mitigation Program fund monies would be provided to the Corps or to another entity approved in writing by the Corps, and used for implementation of aquatic habitat restoration.



John P. Carroll, Colonel
Corps of Engineers, Los Angeles District

9907/6
Date

X 

John Broesamle, President
Ojai Valley Land Conservancy

8/26/99
Date